

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	James D. Pravetz	Art Unit :	2178
Patent No. :	7,395,503	Examiner :	Kyle R. Stork
Issue Date :	July 1, 2008	Conf. No. :	2559
Serial No. :	10/072,382		
Filed :	February 6, 2002		
Title :	DYNAMIC PREVIEW OF ELECTRONIC SIGNATURE APPEARANCE		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

Applicant hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed June 11, 2008 for the above-referenced application indicates that the Patent Term Adjustment at issuance is 553 days. Reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 661 days to 923 days, and to increase Total PTA from 553 to 815 days, is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) The PTO mailed a delayed 14-month first non-final Office Action on January 26, 2005, thereby according a PTO Delay of 661 days. Applicant does not dispute herein this patent term adjustment calculation for this PTO "A Delay."
- 2) Applicant filed an Information Disclosure Statement on April 28, 2005 (received at the PTO on April 28, 2005). Applicant was accorded a delay of 2 days for a supplemental response. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
- 3) Applicant filed a response to the third non-final Office Action on January 29, 2007 (received at the PTO on January 29, 2007). Applicant was accorded a delay

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I hereby certify that this paper was filed with the United States Patent and Trademark Office using the EFS -WEB system on this date: December 22, 2008

- of 2 days for a late response. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
- 4) Applicant filed a Notice of Appeal in response to the third final Office Action on July 9, 2007 (received at the PTO on July 9, 2007). Applicant was accorded a delay of 32 days for a late response. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
 - 5) Applicant filed an Amendment under 37 CFR 1.312 after the Notice of Allowance on April 21, 2008 (received at the PTO on April 21, 2008). Applicant was accorded a delay of 72 days for a submission after allowance. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
 - 6) The application was filed on February 6, 2002 and the patent issued on July 1, 2008, more than three years later. The earliest Request for Continued Examination was filed on October 26, 2005. No PTO Delay was for issuance of the patent after three years from filing. Applicant respectfully submits that the PTO's calculation of this PTO "B Delay" contains an error and that the correct PTO Delay for issuance beyond three years from filing is 262 days, as outlined further below.

REMARKS

Applicant has calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can "overlap" is if they occur on the same day, and if an "A delay" occurs on one calendar day and a "B delay" occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. "A Delays" are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. "B Delays" are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The Wyeth court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies “if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years,” and that “B delay” begins once the PTO has failed to issue a patent within three years, not before.

In the current PTA calculation, the Office has only given credit for the larger of “A Delay” or “B Delay,” rather than the combined sum of “A Delay” and “B Delay” (which does not include any days after three years from filing where “A” and “B” delays overlap).

In this patent, “A Delay” should be calculated as 661 days and “B Delay” should be calculated as 262 days. Thus, the total PTO Delay should be calculated as 923 days.

In consideration of the events described above, Applicant believes the PTA calculation of 553 days is incorrect. As such, Applicant respectfully requests reconsideration of the patent term adjustment in the following manner:

- 1) Total PTO Delay should be calculated as 923 days;
- 2) Total Applicant Delay should be calculated as 108 days; and
- 3) Total PTA should be calculated as 815 days.

Applicant notes that this patent is not subject to a terminal disclaimer.

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Please apply the fee of \$200 required under 37 C.F.R. § 1.18(e) and any other required charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 22, 2008

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